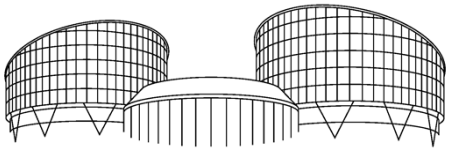

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BOGONOSOVY v. RUSSIA

(Application no. 38201/16)

STRASBOURG

5 March 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bogonosovy v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Vincent A. De Gaetano, *President,*
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 5 February 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38201/16) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Ms Vera Vladimirovna Bogonosova ("the first applicant") and Mr Georgiy Ivanovich Bogonosov ("the second applicant"), on 21 June 2016.

2. The applicants were represented by Mr V.A. Kirillov, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants complained, in particular, under Articles 8 and 13 of the Convention of a violation of their right to maintain family ties with their granddaughter and the absence of an effective domestic remedy in that connection.

4. On 10 November 2016 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. The application was granted priority treatment (Rule 41 of the Rules of Court).

5. By letter of 13 November 2018 the second applicant informed the Court that on 29 August 2018 the first applicant died. He further withdrew the power of attorney that he had given to Mr V.A. Kirillov.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1955 and 1948 respectively. The first applicant died on 29 August 2018. The second applicant lives in St Petersburg.

A. Background of the case

7. The applicants were former spouses. They divorced in 1988, but continued to live together in the same apartment.

8. The applicants' daughter, O., married K.O.V.-S., a national of Finland. The couple settled in Finland.

9. On 28 September 2006 O. gave birth to a daughter, M.

10. In May 2008 O. and M. moved in with the applicants in Russia.

11. On 3 April 2011 O. died of a serious illness. M. remained living with the applicants.

12. According to the Government, during O.'s illness the applicants' relatives Mr and Ms Z. started to help the applicants with the upbringing of M.: they took the girl to their place of residence on weekends and holidays, and attended events in her kindergarten.

13. On 16 May 2011 the second applicant was appointed M.'s guardian with the written consent of the first applicant.

14. On 24 October 2012 the Kirovskiy District Court of St Petersburg granted the second applicant's application and deprived K.O.V.-S. of his parental rights over M.

15. According to the Government, after the death of O., a protracted family dispute arose between the applicants. The first applicant was dissatisfied with the way the second applicant fulfilled his duties as M.'s guardian and insisted that their son, N.B., should take on those obligations. Furthermore, there was a disagreement as to whether M. should start school in September 2013.

16. When the question of M.'s schooling arose Mr and Ms Z. decided to apply to adopt the girl. The applicants at that stage supported their decision.

17. From February to April 2013 Mr and Ms Z. underwent training courses for individuals wishing to adopt a child left without parental care.

18. On 29 May and 13 June 2013 respectively the Kronverkskoye municipal entity issued positive decisions on Mr and Ms Z.'s suitability to become adoptive parents.

19. On 19 June 2013 the head of the Krasnenkaya Rechka municipal entity received a written statement from the second applicant to the effect that he did not object to the adoption of M. by Mr and Ms Z.

20. According to the Government, when the first applicant found out that the second applicant had agreed to the adoption of their granddaughter, she started to set the child against Mr and Ms Z. and to interfere with their communication. She further tried, in vain, to deprive the second applicant of his guardianship of M. and have N.B. appointed as the child's guardian.

21. In connection with this situation, in the beginning of July 2013 Ms Z., with the consent of the second applicant, lodged an application seeking to be appointed as M.'s second guardian.

22. On 2 July 2013 the head of the Krasnenkaya Rechka municipal entity took a decision to appoint Ms Z. as M.'s second guardian. The child's place of residence was determined as being with Ms Z.

23. On 4 July 2013 M. moved in with Mr and Ms Z.

24. From that moment on the first applicant began to lodge applications with the childcare authorities alleging that Ms Z. prevented her communicating with the child.

25. On 26 September 2013 a meeting was held between the parties on the subject of the first applicant's and N.B.'s communication with the child with the participation of the Krasnenkaya Rechka municipal entity, the childcare authorities, the Children's Rights Commissioner in St Petersburg, the prosecutor's assistant of the district prosecutor's office, an expert specialising in conflict resolution and a psychologist of the District Centre for Social Assistance to the Family and Children. An oral agreement was reached between Ms Z. and the first applicant to the effect that the latter's meetings with the child were to take place on 5 October and 12 October 2013 for two hours in the presence of Ms Z. On 1 November 2013 Ms Z. and the first applicant were to come to the office of the Children's Rights Commissioner for a debriefing on the meetings.

26. On 9 December 2013 the first applicant informed the childcare authorities that none of the meetings had taken place.

27. While the first applicant did not have any contact with the child after that, the second applicant continued communicating with M. until November 2014. Subsequently Mr and Ms Z. prevented the second applicant from staying in touch with M.

B. Adoption proceedings

1. Adoption judgment

28. Meanwhile, on 13 November 2013 Mr and Ms Z. lodged an adoption application with the Primorskiy District Court of St Petersburg ("the District Court").

29. On 25 November 2013 the second applicant submitted to the deputy head of the local administration of the municipal entity Krasnenkaya

Rechka his agreement to M.'s adoption by Mr and Ms Z. He expressed his wish for the adoption case to be heard in his absence.

30. On 26 November 2013 the District Court granted the application by Mr and Ms Z. to adopt M. The judgment was not appealed against and became final on 7 December 2013.

31. In 2015 the applicants, acting separately, applied for restoration of the procedural time-limit for appeal against the adoption judgment of 26 November 2013 seeking to challenge it on account of, *inter alia,* their loss of post-adoption contact with their granddaughter, which ran contrary to the child's interests.

2. Second applicant's appeal against the adoption judgment

32. On 11 February 2015 the second applicant applied to the District Court to have the procedural time-limit for lodging his appeal against the adoption judgment of 26 November 2013 restored.

33. On 16 March 2015 the District Court granted the second applicant's application.

34. On 13 May 2015 the St Petersburg City Court ("the City Court") upheld the judgment of 26 November 2013 on the second applicant's appeal. The City Court dismissed the second applicant's argument to the effect that the child's close relatives had been unaware of the adoption proceedings. It noted that the second applicant had known about the proceedings, had not raised any objections to the adoption and had asked to have the case examined in his absence. The City Court further held that notification, let alone involvement in the proceedings, of the child's other relatives (grandmother and uncle), was not required by law. As regards the second applicant's argument to the effect that the child's adoption had led to the termination of all contact between her and the grandparents, the City Court stated, relying on Article 67 §§ 1 and 2 of the Family Code, that the grandfather, grandmother, brothers, sisters and other relatives have a right to contact with the child and that in the event of a refusal by the child's parents to afford them such contact, they are entitled to apply to a court to have the obstacles to their contact with the child eliminated.

35. On 21 August 2015 the City Court and on 22 December 2015 the Supreme Court of Russia ("the Supreme Court"), following a prior application for review of the final judgment, decided not to refer the case for review in the cassation procedure.

3. First applicant's attempt to have the procedural time-limit for appeal against the adoption judgment restored

36. Meanwhile, on 28 May 2015 the first applicant applied to the District Court to have the procedural time-limit for lodging her appeal against the adoption judgment of 26 November 2013 restored. Relying on

Article 137 of the Family Code she argued that by failing to involve her in the adoption proceedings the domestic court had ruptured her family ties with her granddaughter.

37. However, on 14 July 2015 the District Court dismissed her application. The District Court held that the first applicant had not been a party to the proceedings resulting in the judgment of 26 November 2013, that the above judgment had had no bearing on her rights and obligations, and therefore she had had no standing to appeal against it. The District Court further held that the first applicant misinterpreted Article 137 of the Family Code. It did not follow from the provisions of Article 137 that the first applicant's family ties with her granddaughter would be ruptured. Relying of Article 67 of the Family Code, the District Court considered that it was open to the first applicant to apply to a court for the determination of her contact with the child.

38. On 10 September 2015 the City Court upheld the above decision on appeal.

39. On 11 December 2015 the City Court and on 29 January 2016 the Supreme Court decided not to refer the above decisions for review in the cassation procedure.

C. Proceedings relating to the applicants' contact rights

1. Proceedings pursued by the first applicant

40. On 3 March 2014 the first applicant instituted court proceedings against Mr and Ms Z. seeking to oblige them not to thwart her contact with her granddaughter M. and to have determined the contact schedule with the latter.

41. On 18 April 2014 the administration of the municipal entity Krasnenkaya Rechka submitted that the girl needed a calm psychological atmosphere; that she perceived the situation around her as tense and anxious; and that she did not understand the conflict between the applicants themselves and between the first applicant and the girl's adoptive parents.

42. On 16 October 2014 in her conversation with a psychologist M. submitted that the applicants "had never been friends", that they often swore, even in her presence; and that she was not frightened when they swore because she was used to it.

43. On 21 January 2015 an expert of the Istina Independent Expert Organisation gave her opinion that the child considered and called Mr and Ms Z. her parents. She had close emotional bonds with them. Despite the absence of contact, the girl remembered and loved her grandmother. This was explained by the fact that the adoptive parents, although preventing their communication, were not exercising psychological pressure on the girl and were not denigrating the grandmother. The expert considered, however,

that communication between the child and the grandmother could have a negative impact on the psychological state of the child, as there was an unsettled conflict between the applicants and the Z.s: the grandmother disapproved of the child's adoption and was challenging its lawfulness. The expert further considered that the child's residence with the grandparents would not be ideal, because, given the instability of interfamilial relations and the protracted conflict in the applicants' family, there existed a risk of the child's being involved in the adults' conflict. However, since the girl retained the positive image of her grandmother and expressed her wish to communicate with her, it was possible to establish a contact arrangement, which would provide for an obligatory preparatory stage, including reconciliation between the relatives.

44. On 10 February 2015 the Pushkinskiy District Court of St Petersburg established, on the basis of the relevant reports and expert examinations, that M. still had a positive image of the first applicant and had expressed a wish to have contact with her, and that it was therefore possible to establish a contact schedule between them. The Pushkinskiy District Court therefore ordered Mr and Ms Z. not to place obstacles in the way of the first applicant's communication with M. and held that contact between the first applicant and M. should take place as follows: during the first six months after the finalisation of the judgment – each second and fourth Sunday of the month from 3 p.m. to 6 p.m. outside the parents' and the grandparents' places of residence in the presence of the parents, and thereafter on the same conditions without the parents present. A year after the finalisation of the judgment the first applicant was able, in addition to the above arrangements, to spend two weeks with M. during the summer holidays with sixty days' prior notice to the parents of the place of the planned holiday. Mr and Ms Z. appealed.

45. Following an appeal by Mr and Ms Z., on 17 September 2015 the City Court quashed the above judgment on appeal and discontinued the proceedings. The City Court held that the District Court had committed substantial violations of material and procedural law which resulted in wrongful conclusions. Relying on Articles 137 §§ 4 and 5 of the Family Code and clause 18 of the ruling of the Plenary of the Supreme Court no. 8 of 20 April 2006 (see paragraphs 54, 55 and 68 below), the City Court held that the first applicant had not applied for continued post-adoption contact with her granddaughter within the adoption proceedings, for which reason this issue had remained unexamined by [the District Court examining the adoption case] and no reference had been made in the adoption judgment regarding continuation of family ties between the first applicant and her granddaughter after her adoption. In such circumstances, the City Court considered that civil and family law did not enable the first applicant to claim the elimination of obstacles to her contact with the child and determination of the terms of such contact with the latter.

46. On 7 December 2015 the City Court and on 29 February 2016 the Supreme Court, following a prior application for review of the final judgment, decided not to refer the decision of 17 September 2015 for review in the cassation procedure.

2. Proceedings pursued by the second applicant

47. On an unspecified date in 2015 the second applicant instituted court proceedings against Mr and Ms Z., seeking to oblige them not to thwart his contact with his granddaughter M. and to have the contact schedule with the latter determined pursuant to Article 67 of the Family Code.

48. On 1 December 2015 the District Court held that since the adoption judgment of 26 November 2013 did not contain an indication as to the continuation of family ties between the second applicant and his granddaughter after the adoption, the former did not have a right to claim the elimination of obstacles to contact with the child and determination of the terms of his contact with his granddaughter. Consequently, the District Court discontinued the proceedings.

49. On 2 March 2016 the City Court upheld the above decision on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Family Code of the Russian Federation

50. The general part of the Family Code provides that grandparents, brothers, sisters and other relatives are entitled to maintain contact with the child. If the parents, or one of them, prevent close relatives from seeing the child, the childcare authorities may order that contact be maintained between the child and the relative in question. If the parents do not comply with the childcare authorities' order, the relative concerned or the childcare authorities may apply to a court for a contact order. The court must take a decision in the child's interests and must take the child's opinion into account. If the parents do not comply with the contact order issued by a court, they may be held liable in accordance with the law (Article 67).

51. Adoption is the preference for the placement of children left without parental care (Article 124 § 1).

52. Adoption is carried out by a court following an application of an individual (individuals) wishing to adopt a child. Cases concerning the adoption of children shall be examined by the court with the obligatory participation of the adoptive parents, childcare authorities, as well as a prosecutor (Article 125 § 1).

53. The adoption of children under guardianship (tutelage) requires the written consent of their guardians (trustees) (Article 131 § 1).

54. Adopted children lose personal non-pecuniary and pecuniary rights and are relieved of their obligations *vis-à-vis* their parents (their relatives) (Article 137 § 2).

55. If one of the parents of an adopted child dies, at the request of one of the deceased parent's parents (the child's grandfather or grandmother) their personal non-pecuniary and pecuniary rights and obligations in respect of the child can be maintained if this is required in the child's interest. The right of the relatives of the deceased parent to have contact with the adopted child should be exercised in conformity with Article 67 of the present Code (Article 137 § 4).

56. The adoption judgment should indicate whether the adopted child is to maintain relations with one of the parents or relatives of the deceased parent (Article 137 § 5).

B. Code of Civil Procedure of the Russian Federation

57. Parties to proceedings are to be summoned to a court by registered mail with confirmation of receipt, by a telephone call or telegram, by fax or by any other means which will secure delivery of the summons to the recipient. Summonses must be served on the parties in such a way that they have enough time to prepare their case and appear at the hearing (Article 113 §§ 1 and 3).

58. A civil case is to be heard in a court session, with mandatory notification to all parties of the place and time of the court session (Article 155).

59. If a party to the case fails to appear at the hearing and there is no evidence that the party has been duly summoned, the hearing must be adjourned (Article 167 § 2).

60. The adoption application is examined by a court in camera in the mandatory presence of the adoptive parent(s), a representative from the custody and guardianship office, the prosecutor, and the child if the latter is over 14 years old; the presence of the child's parents, other interested parties and the child – if aged between ten and 14 years old – can also be required if deemed necessary (Article 273).

61. If the court grants the adoption application, the rights and obligations of the adoptive parents and the adopted child become established on the date of the entry into effect of the decision (Article 274 § 2).

62. The decision of the court to grant the adoption application may be appealed against within ten days of its delivery in the final form (Article 274 § 2.1).

63. A court may restore a procedural term established by a federal law after its expiry if it finds that reasons for failure to comply with such a term were valid (Article 112 § 1).

64. Appeal against non-final decisions of first-instance court can be lodged by parties to the proceedings and other participants of the proceedings. It can also be lodged by persons who had not been involved in the proceedings whereby their rights and obligations had been decided upon (Article 320 §§ 2 and 3).

65. For the relevant provisions of domestic law on review of judicial decisions in cassation and supervisory-review procedures see *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, §§ 31-45, 12 May 2015).

66. Article 392 of the Code of Civil Procedure of the Russian Federation contains a list of situations which may justify the reopening of a finalised case on account of newly discovered circumstances. A judgment of the European Court of Human Rights finding a violation of the European Convention on Human Rights in a case in respect of which an applicant lodged a complaint with the Court should be considered a new circumstance warranting a reopening (Article 392 § 4 (4)).

C. Relevant domestic practice

67. On 20 April 2006 the Plenary Supreme Court of Russia adopted ruling no. 8 on the application of legislation by the court during the examination of cases concerning the adoption of children. Clause 4 provides that, since pursuant to Article 273 of the Code of Civil Procedure of the Russian Federation the child's parents, other interested parties, namely the child's relatives, the institution where the child resides or the child himself – if aged between ten and 14 years old – can be involved in the adoption proceedings where it is deemed necessary, the judge must decide the issue of the above persons' participation during the preparation for the hearing so that the adoption case can be examined in the best interests of the child to the maximum extent possible.

68. Clause 18 of the ruling further provides that the operative part of the adoption judgment must indicate, among other things, whether the court grants the application for continued personal non-pecuniary and pecuniary rights by one of the parents of the adopted child or by relatives of the adopted child's deceased parent.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION

69. The applicants complained of a violation of their right to maintain family ties with their granddaughter after her adoption. They relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicants further complained that they had not had at their disposal effective domestic remedies in respect of the alleged violation under Article 8, in breach of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

1. Complaints lodged by the first applicant

70. The Court notes that while the proceedings before it were pending, on 29 August 2018 the first applicant died. The Court has therefore to consider whether it is justified to continue the examination of the first applicant's grievances within the meaning of Article 37 § 1 (c) of the Convention reading as follows:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

71. The Court notes that following the first applicant's demise no heir or close family member expressed a wish to pursue the proceedings in her stead. The Court further considers that there is no general interest which would necessitate proceeding with the examination of the complaints raised by the first applicant.

72. In such circumstances, the Court finds that the conditions provided for by Article 37 § 1 of the Convention are satisfied and that it is appropriate to strike out of the list of cases the part of the application concerning the complaints lodged by the first applicant.

2. Complaints lodged by the second applicant

73. The Court notes that the second applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The Government

(i) Article 8 of the Convention

74. The Government acknowledged that there had been an interference with the second applicant's right to respect for his family life within the meaning of Article 8 § 1 of the Convention in connection with the termination of family relations with his granddaughter. However, the interference in question had been carried out in accordance with the law and had been necessary within the meaning of Article 8 § 2 of the Convention. The national courts had based themselves on expert opinions and had proceeded from the need to ensure the best interests of the child.

75. In the course of the adoption proceedings the second applicant did not apply to the domestic court to maintain his personal non-pecuniary and pecuniary rights and obligations in respect of his granddaughter in accordance with Article 137 § 4 of the Family Code. The domestic court had thus been prevented from examining this issue on its own initiative. Besides, the second applicant had voluntarily refused to participate in the adoption proceedings.

76. Since the second applicant had no legal right to communicate with his granddaughter following her adoption, the restoration of his contact with the child would only have been possible if he had been reconciled with the Z.s, who had become the child's parents and who could decide what would be in her best interests. The Government concluded therefore that there had been no violation of Article 8 of the Convention in the present case.

(ii) Article 13 of the Convention

77. The Government argued that the second applicant had been afforded effective domestic remedies against the alleged violation under Article 8 of the Convention, which he had used (see paragraphs 32-34 and 47-49 above).

(b) The second applicant

78. The second applicant maintained his complaints. He submitted that the adoption proceedings had been unlawful. In particular, the examination of the adoption case without him being involved in the proceedings had deprived him of an opportunity to express his interest in maintaining a relationship with his granddaughter. This had resulted in the absence of a reference as to the preservation of his relationship with the child in the adoption judgment and, as a consequence, it had been impossible for him to protect his interest in maintaining contact with the child after the termination of the adoption proceedings. The second applicant believed that the interference in question had neither been proportionate nor had it been necessary in a democratic society.

2. The Court's assessment

(a) Article 8 of the Convention

79. The Court reiterates that there may be "family life" within the meaning of Article 8 of the Convention between grandparents and grandchildren where there are sufficiently close family ties between them. While cohabitation is not a prerequisite, as close relationships created by frequent contact also suffice, relations between a child and his or her grandparents with whom he or she had lived for a time will normally be considered to fall within that category (see *Kruškić v. Croatia* (dec.), no. 10140/13, § 108, 25 November 2014).

80. In the present case the second applicant had been taking care of his granddaughter M. for five years from May 2008, when she had moved in with him together with her mother at age one year and eight months, through her mother's serious illness and death in April 2011, and until July 2013, when the girl moved out to live with her future adoptive parents Mr and Ms Z. He had also been M.'s guardian between May 2011 and December 2013. The Court is satisfied that there was family life between the second applicant and the child within the meaning of Article 8 of the Convention. This has not been disputed by the parties.

81. The Court will next examine whether there has been a failure to respect the second applicant's family life.

82. The Court notes that where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be maintained. The relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection. The right to respect for family life of grandparents in relation to their grandchildren primarily entails the right to maintain a normal grandparent-grandchild relationship through contact between them, even though that contact normally takes place with the

agreement of the person who has parental responsibility (see *Mitovi v. the former Yugoslav Republic of Macedonia*, no. 53565/13, § 58, 16 April 2015).

83. The Court is mindful, however, that the adoption terminates the legal relationship between the child and his or her natural parents and family of origin and, therefore, the Convention obligation to enable the family tie to be maintained will necessarily change (see paragraph 54 above).

84. The Court observes that in the present case the issue of post-adoption contact, thus the issue of whether a family tie between the second applicant and his granddaughter should be maintained after her adoption was not examined as such by the domestic courts in the course of the adoption proceedings.

85. The Court notes that the Government acknowledged that there had been an interference with the second applicant's right to respect for his family life within the meaning of Article 8 § 1 of the Convention in connection with the termination of family ties with his granddaughter after her adoption.

86. The Court reiterates that an interference breaches Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and is, in addition, "necessary in a democratic society" to achieve those aims. The Court will therefore proceed with examining whether the interference in question was carried out in accordance with the law.

87. Pursuant to the Court's case-law, the wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, that is to say to be accessible, foreseeable and accompanied by necessary procedural safeguards affording adequate legal protection against arbitrary application of the relevant legal provisions (see *Surikov v. Ukraine*, no. 42788/06, § 71, 26 January 2017, with further references).

88. Turning to the circumstances of the present case, the Court notes that domestic law provides that adopted children lose personal non-pecuniary and pecuniary rights and are relieved from obligations *vis-à-vis*, in particular, their relatives. However, where at the request of the adopted child's grandparents the court examining the adoption case decides, in the interests of the child, to maintain their personal non-pecuniary and pecuniary rights and obligations in respect of the child, an application by such relatives for contact with the child can be made under Article 67 of the Family Code (see paragraphs 54-55 above). The Court notes in this connection that the second applicant did not make an application for post-adoption contact with his granddaughter before the District Court examining the adoption case at first instance. This issue was therefore not examined by the District Court and no reference to post-adoption contact between the child and the second applicant was made in the operative part

of the adoption judgment, resulting in the loss of any legal tie between them and making it impossible for him to seek contact with the child under Article 67 of the Family Code as of the adoption judgment's becoming final on 7 December 2013 (see paragraphs 30 and 68 above).

89. The Court takes note of the second applicant's argument to the effect that his failure to apply for maintaining personal non-pecuniary and pecuniary rights and obligations in respect of his granddaughter before the District Court examining the adoption case in the first instance resulted from the District Court's omission to involve him in the adoption proceedings. The Court notes, however, that the domestic law did not provide for mandatory presence of the second applicant as the child's guardian in the examination of the adoption application. This issue was left to the discretion of the court examining the adoption case (see paragraphs 60 and 67 above). It further notes that the second applicant was aware of the adoption proceedings, having consented to the adoption in writing and expressed the wish for the case to be heard in his absence (see paragraph 29 above). Nothing therefore suggests that the second applicant was prevented from or unable to apply to the District Court for continued contact with his granddaughter after her adoption or that the adoption judgment delivered by the District Court on 26 November 2013 had been unlawful.

90. The Court notes that subsequently, when the consequences of the adoption proceedings entailing the permanent severance of family ties between the second applicant and his granddaughter became clear to him, and possibly after his relationship with Mr and Ms Z. had deteriorated (see paragraph 27 above), the second applicant pursued two sets of proceedings seeking to restore his contact with the child. In the first of those proceedings, the second applicant succeeded in having restored the procedural time-limit for lodging his appeal against the adoption judgment and challenged the judgment in question on account of, in particular, the loss of contact with his granddaughter following her adoption. The City Court, however, dismissed his appeal without discussing the question of whether it was appropriate for him to have contact with his granddaughter, at the same time stating that it remained open to him to apply to a court for the determination of his contact with his granddaughter in accordance with Article 67 of the Family Code (see paragraphs 32-34 and 49 above).

91. However, when the second applicant brought proceedings against Mr and Ms Z. seeking elimination of obstacles to his contact with his granddaughter and determination of the terms of his contact with her under Article 67 of the Family Code, the courts discontinued the proceedings, stating that, since the adoption judgment of 26 November 2013 did not contain an indication as to the continuation of family ties between the second applicant and his granddaughter after the adoption, the former did not have a right to claim the elimination of obstacles to contact with the

child and determination of the terms of his contact with her (see paragraphs 47-49 above).

92. Having regard to the foregoing, a question arises as to whether the domestic law governing the issue of post-adoption contact between the adopted child and his or her relatives was clear enough and foreseeable in its application in so far as it did not expressly provide that the rights of relatives of the adopted child were transferred to the adoptive parents or otherwise ceased on adoption, unless an application by relatives had been made in the course of the adoption proceedings for continued relations, including contact, and specific provision made for them to this effect in the adoption judgment.

93. Presuming, however, that this was implied in the relevant provisions of the domestic law (see paragraph 88 above), once the second applicant's request for restoration of the procedural time-limit for lodging his appeal against the adoption judgment had been granted by the District Court it was then for the City Court dealing with the second applicant's appeal to examine the issue of whether he should have post-adoption contact with the child, in particular by deciding whether this corresponded to the child's interests, and if so, to include the relevant provision in the operative part of the adoption judgment. Instead the City Court upheld the adoption judgment and led the second applicant to believe that it was open to him to have the issue of his post-adoption contact with his granddaughter settled after the termination of the adoption proceedings pursuant to the procedure provided by Article 67 of the Family Code. In reality, though, no such remedy was available to him because, as the City Court and the District Court found in the Article 67 proceedings, in the absence of a specific provision as to continued post-contact in the adoption judgment, no application for contact could be made.

94. Thus, as a result of the way the City Court interpreted and applied the relevant provisions of domestic law in the re-opened adoption proceedings, the second applicant was entirely and automatically excluded from his granddaughter's life after her adoption even though the issue of post-adoption contact was before the City Court.

95. Having regard to the foregoing and proceeding on the assumption of sufficient clarity of domestic law governing the subject of post-adoption contact between the adopted child and his or her relatives, the Court considers that the failure of the City Court to examine the merits of the issue of the second applicant's post-adoption contact with his granddaughter amounted to disrespect for the second applicant's family life. There has accordingly been a violation of Article 8 of the Convention.

(b) Article 13 of the Convention

96. Having regard to its finding relating to Article 8 of the Convention (see paragraphs 79-95 above), the Court considers that it is not necessary to

examine separately whether there has been a violation of Article 13 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

98. The second applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

99. The Government considered that the second applicant's claim was excessive.

100. The Court considers that the second applicant must have suffered, and continues to suffer, distress as a result of his inability to maintain a contact with his granddaughter. In the light of the circumstances of the case, and making an assessment on an equitable basis, as required by Article 41, the Court awards the second applicant EUR 5,000 euros under this head.

B. Costs and expenses

101. The second applicant claimed EUR 1,000 for his legal representation before the Court.

102. The Government submitted that no award of costs and expenses should be made.

103. Pursuant to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the second applicant's claim for costs and expenses, finding that it has not been shown that he has made, or is liable to make, any disbursements to his representative before the Court.

C. Default interest

104. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerns the complaints raised by the first applicant;

2. *Declares* the complaints under Articles 8 and 13 of the Convention raised by the second applicant admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Vincent A. De Gaetano
Registrar	President